

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF MASSACHUSETTS
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5 UNITED STATES) CR. NO. 04-10073-NG-1
6 VS.) COURTROOM NO. 2
7 ELIAS ABAD) 1 COURTHOUSE WAY
8 BOSTON, MA 02210
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11 FINDINGS OF FACT AND SENTENCING

12 JANUARY 9, 2005

13 3:03 P.M.
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18 BEFORE THE HONORABLE NANCY GERTNER
19 UNITED STATES DISTRICT COURT JUDGE
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24 VALERIE A. O'HARA
25 OFFICIAL COURT REPORTER

1 A P P E A R A N C E S:

2 United States Attorney's Office, by JOHN A. CAPIN,
3 ASSISTANT UNITED STATES ATTORNEY, One Courthouse Way,
4 Suite 9200, Boston, Massachusetts 02210, for the United
5 States;

6 Law Office of Jeffrey Rubin, by JEFFREY B. RUBIN, ESQ.,
7 One Center Plaza, Suite 230, Boston, Massachusetts 02108,
8 for the Defendant.
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1 THE COURT: Technically because of Mr. Abad's
2 criminal history he is in a zone which requires some portion
3 of the sentence to include home detention. I would depart
4 downward, however, on the grounds that that criminal history
5 overstates his culpability, and, in addition, home detention
6 I'm told by probation is not feasible in a rooming house,
7 which is essentially where he lives so that I'm going to
8 sentence Mr. Abad to three years of probation, no fine.

9 While on probation he's not to commit another
10 federal, state or local crime and shall not possess a
11 controlled substance. He shall submit to a drug test within
12 15 days from his placement on probation not to exceed 104
13 tests per year. He shall submit to the collection of a DNA
14 sample as directed by probation. He's obliged to comply
15 with the standard conditions, and, in addition, he's
16 prohibited from possessing a firearm. He's not to consume
17 any alcoholic beverages. He is to continue to attend
18 Alcoholics Anonymous meetings as directed by probation.

19 He's to participate in a program for substance
20 abuse as directed by probation and may be required to
21 contribute based on his ability to pay. He's also to
22 participate in a mental health program again as required by
23 probation, and he is to contribute. He is to comply with
24 any decisions made in his immigration case regarding his
25 legal status. If ordered deported, he's to leave the

1 country immediately and not return without the prior
2 permission of the Secretary of the Department of Homeland
3 Security. Again, I hope that that decision is not made and
4 you're given an opportunity to stay in this country. You're
5 to use your true name, not any aliases, special assessment
6 of \$100.

7 MR. CAPIN: The government does object to the
8 downward departure, and I think that the same sentence can
9 be achieved in Zone G so far as Mr. Abad serves one month
10 home detention. I don't think there's a requirement that he
11 he serve it.

12 PROBATION OFFICER: Your Honor, home detention
13 with electronic monitoring, we would not be able to have
14 electronic monitoring, however if your Honor said home
15 detention without electronic monitoring.

16 THE COURT: It would serve the same purpose?

17 MR. CAPIN: Yes.

18 THE COURT: Well, then for the sake of my
19 statistics, this is not a departure, Maryellen. One month
20 of home detention without electronic monitoring, and thank
21 you very much. So this is three years' probation, one month
22 of home detention without electronic monitoring. Probation
23 will describe what that consists of. You have a right to
24 appeal, and your lawyer will let you know what that entails.
25 If there is anything else I can do, Mr. Rubin, you let me

1 know, if there's anything further I can do beyond this.

2 Thank you very much.

3 MR. RUBIN: Thank you very much.

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